

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

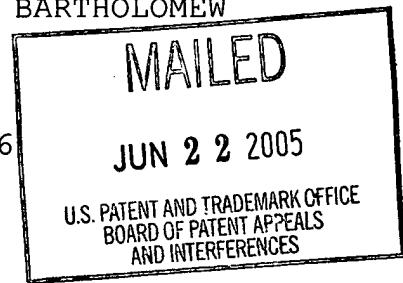
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte ROBERT D. FARRIS and DALE L. BARTHOLOMEW

Appeal No. 2005-1199  
Application No. 09/617,816

ON BRIEF



Before THOMAS, HAIRSTON and DIXON, Administrative Patent Judges.  
THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1 through 8.

Representative claim 1 is reproduced below:

1. A method of voice communication between two terminals including the steps of:

establishing a voice communication link between said terminals via a first landline public packet switched network;

carrying voice information between said terminals over said link;

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monitoring quality of service communication in said public packet switched network;

establishing a second voice communication link between said terminals via a second landline packet switched network when said monitored quality of service departs from a predetermined value.

The following reference is relied on by the examiner:

Farris 6,064,653 May 16, 2000  
(filed Jan. 7, 1997)

Claims 1 through 3 and 6 through 8 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Farris. Claims 4 and 5 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Farris alone.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and reply brief for appellants' positions, and to the answer for the examiner's positions.

#### OPINION

For the reasons set forth by the examiner in the answer, as expanded upon by here, we sustain both of the examiner's stated rejections of claims 1 through 8 on appeal.

In the principal brief on appeal appellants have indicated at the middle of page 3 that the claims fall together. Arguments are presented only as to the subject matter of independent claim

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1 on appeal rejected under 35 U.S.C. § 102. Appellants have chosen not to present any arguments with respect to the separately stated rejection under 35 U.S.C. § 103.

Arguments are presented to us only as to representative independent claim 1 on appeal to the extent this claim recites:

establishing a second voice communication link between said terminals via a second landline packet switched network when the said monitored quality of service departs from a predetermined value.

No other features recited in representative independent claim 1 on appeal are argued before us.

In asserting that Farris does not teach or suggest the use of a second landline packet switched network, appellants state at page 4 of the principal brief on appeal that "the Examiner has misread Farris, which clearly teaches use of the PSTN, a *circuit switched network*, for transmission of ISDN calls." Further developing this issue, appellants state at page 5 of the principal brief on appeal that "it is clear from Farris' disclosure that the use of ISDN comprises use of the conventional circuit switched network -a PSTN- and not a separate second packet switched network, as recited by claim 1." In summary, the appellants further add at the bottom of page 6 of the principal brief on appeal "it is clear that ISDN, in the context of that

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[Farris] reference, would use the infrastructure of the PSTN. The PSTN is not a packet switched network."

As indicated at page 2 of the reply brief appellants also state that "the mere sending of 'packets' over an ISDN call circuit is not an indication that the ISDN call is *packet switched*." Appellants further state that "the Examiner does not dispute appellants' explanation that the PSTN is a circuit-switched network, and not a packet-switched network."

Even though we do not disagree with any of these assertions made by appellants in the brief and reply brief since they are consistent with our review of Farris, we still affirm the examiner's rejection of representative claim 1 on appeal. The answer has set forth various locations of Farris on which the examiner relies for the position to maintain the rejection, including the discussion at column 14, lines 13 through 33. If the monitored traffic conditions indicate that a first established internet link that is packet switched is below an acceptable threshold level, the gateway 20 establishes a call through an ISDN connection to a PSTN remote gateway. In context, it is revealed beginning at column 1 discussion of Farris that ISDN networks do communicate by means of packets but are not

necessarily stated to be and are not known in the art to be packet switched networks.

Nevertheless, in view of the significant discussions of the gateways 20 beginning in Farris' figure 3 (which appears somewhat identical to the showing in the specification figure 2) and the subsequent figures and discussion in Farris, each gateway 20 has within it, as in figure 5, a router such as to connect to the internet for packet switching purposes as shown in figure 1 of Farris. Even though part of the rerouted communications appears to use ISDN and packet technology in routing through conventional PSTN non-packet switched networks, the connection to the remote gateway 20 to bypass a given remote gateway 20 does indicate that it will connect again to another gateway 20 and therefore be in part packet switched according to the requirements of the quoted clause at the end of representative claim 1 on appeal above. Since the claims do not exclude any use of an ISDN/PSTN circuit switched system during this deviation, the rejection is sustained. The establishment of the second voice communication link is not stated in claim 1 to be only by means of a second landline packet switched network.

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In view of the foregoing, the decision of the examiner rejecting various claims on appeal under 35 U.S.C. § 102 and 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

JAMES D. THOMAS  
Administrative Patent Judge  
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KENNETH W. HAIRSTON  
Administrative Patent Judge  
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JOSEPH L. DIXON  
Administrative Patent Judge  
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